

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ERNEST N. BENJAMIN,
Petitioner-Appellant

v.

LUIS SPENCER,
Respondent-Appellee.

C.A. 04-11025-JLT
(Appeal No. 05-1589)

ORDER ON APPLICATION TO APPEAL *IN FORMA PAUPERIS*

TAURO, D.J.

On or about May 27, 2005, the First Circuit Court of Appeals transmitted for ruling by this Court, the Petitioner's Application to Proceed Without Prepayment of Fees and Affidavit, filed in connection with his appeal of his § 2254 habeas petition.¹

Upon review of the Petitioner's financial disclosures, including his prison account information, this Court finds the Petitioner has sufficient funds to pay the \$255 appellate filing fee at this time. Petitioner has a prison job in which he earns \$40.00 per month, and earned \$480.00 in the past twelve months. Additionally, his prison account information reflects that his six month average daily balance was \$634.06, and that his current balance (based on total income for the six month period minus total expenditures for the period) is \$970.21.

Moreover, Petitioner's prison account statement also reflects that he has over the past six months, received regular financial support from a number of individuals (*e.g.* Brandy Clinton, Frank Shanton III, George White, Latoya White, Ephiteo Evans, Dorothy Benjamin, Jarod

¹On June 7, 2004 the Petitioner's application to proceed *in forma pauperis* was denied, and Petitioner paid the \$5.00 filing fee. The First Circuit directed the Petitioner to either pay the \$255.00 filing fee for appeal, or file a motion to proceed *in forma pauperis*, accompanied by his certified prison account statement.

Benjamin, Rosa Sicari, Crystal Houson, J. Concepcion). These contributions provide Petitioner additional funds, in excess to his claimed expenses of exactly \$40.00 per month (the amount he earns at his prison job), to be used for sundries. Thus, requiring the Petitioner to pay the full filing fee would not foreclose his ability to pursue the appeal, nor would it appear to deprive him of the small amenities² available within the prison.

Accordingly, based on the above, this Court finds Petitioner does not qualify for *in forma pauperis* status, and his application/motion for leave to proceed *in forma pauperis* is denied.

This Order shall be transmitted to the First Circuit Court of Appeals forthwith.

/s/ Joseph L. Tauro

JOSEPH L. TAURO

UNITED STATES DISTRICT JUDGE

Dated: August 8, 2005

²Cf. Jones v. Zimmerman, 752 F.2d 653 (11th Cir. 1983)(payment of fee would require prisoner to forego small amenities of life which prisoners are permitted).